



City of Loma Linda Official Report

Floyd Petersen, Mayor
Stan Brauer, Mayor pro tempore
Robert Christman, Councilmember
Robert Ziprick, Councilmember
Charles Umeda, Councilmember

COUNCIL AGENDA: March 14, 2006
TO: City Council
VIA: Dennis R. Halloway, City Manager
SUBJECT: Council Bill #R-2006-15 – Adopting policies in connection with
conduit bond issues and related hearings

RECOMMENDATION

It is recommended the City Council adopt Council Bill #R-2006-15.

BACKGROUND

See attached.

CITY OF LOMA LINDA

SUBJECT: Policies in connection with TEFRA Hearings by the City of Loma Linda

AUTHORIZATION: City Council Resolution No. ____

EFFECTIVE DATE: March __, 2006

1. From time to time, the City is called upon to conduct hearings under the Tax Equity and Fiscal Responsibility Act (IRC § 147(f), as amended) (commonly referred to as "TEFRA") as a precursor to the issuance of bonds by a governmental entity on behalf of private parties (as determined under the Internal Revenue Code). Such hearings are generally triggered because the facilities to be financed are located (or to be located) within the corporate limits of the City.

2. Historically, the City has acted as issuer in connection with conduit financings for all facilities located within the City limits for which TEFRA hearings are required. This practice has generally achieved three positive results for the City. First, by being the issuer, the City (and, if applicable, the Agency) is in a position to insist upon thorough briefings regarding the facilities to be financed and developments that occur relative to such projects. Second, the City, which has significant portions of non-residential property devoted to uses which result in exemptions from property taxes, has been able to offset costs (such as fire and police protection) through the collection of issuer's fees. Third, the City, as well as the Agency, is able to have the issuance of bonds conducted by professionals which it directly selects and who understand the policies, procedures and interest of the City and Agency.

3. The City typically has substantial interest relative to the subject matter of facilities which are financed by conduit issuers within its corporate limits facilities. In the event bonds were to be issued by an issuer other than the City (or the Agency, or another entity under control of the City or Agency), the ability of the City (or Agency, as applicable) to assure that the public interest is best furthered in connection with the manner in which the issuance is conducted is greatly lessened. While other arrangements may be available, and may, on occasion be more convenient for particular private parties, the ability of the City (or Agency) to best advance the public interest is diminished. In addition, practical experience suggests that where the City (or Agency) is not the issuer, there is no City or Agency control over the issuance process and requests for TEFRA hearings or necessary agreements, consents or waivers are presented in time frames that may not be conducive to appropriate levels of review. Relative to housing matters, for example, the Agency is in a far better position to insist upon the imposition of long-term affordability covenants that pass muster under provisions of the California Community Redevelopment Law to maintain the priority of covenants and to negotiate other protective measures than would be the case if the City or Agency does not act as issuer. In addition, City or Agency staff is invariably privy to greater information in connection with bonds for which the City or Agency acts as issuer.

4. In connection with conduit bonds issued by the City (or Agency), the City has traditionally charged an issuer's fee; this has typically been $\frac{1}{4}$ of 1% of the principal amount of the bonds, as a one-time fee, payable at time of issuance of the bonds. The City's Financial Advisor indicates that practices of various conduit issuers vary considerably. In general, however, the size of issuer's fees depends partially upon the subject matter underlying the issue, with industrial development bonds and housing bonds tending toward higher fees and other facilities tending to have lower issuers fees.

5. The City's Financial Advisor has further recommended that the fees charged by City relative to TEFRA and/or other matters related to the issuance of bonds be subject to periodic review; such issuer's fees are exclusive of bond counsel and financial advisor fees.

THEREFORE, the following are adopted as policies of the City and the Agency:

1. In any case where under applicable law the City is required to conduct a TEFRA hearing, the City or the Agency shall require as a condition of holding that hearing that the City or Agency be the conduit issuer of the bonds. For this purpose, "City" and "Agency" shall be deemed to include a financing authority controlled by the City or the Agency.

2. In connection with the issuance of bonds which are a conduit issue, the normal issuer's fee, which shall be chargeable at the time of the TEFRA hearing, shall be payable to the City (or at City's direction, the Agency) as follows: a) an amount equal to $\frac{1}{8}$ of 1% of the principal amount of the bonds shall be payable at closing of the bonds (the "Initial Increment"), and thereafter b) an amount equal to $\frac{1}{8}$ of 1% of the principal amount of the bonds then outstanding, up to a maximum of \$50,000 per year (each of which shall constitute an "Annual Increment") shall be payable on each anniversary of the payment of the Initial Increment.

3. Upon a showing that substantial savings would flow directly to the City or Agency in connection with the issuance of bonds, the City may, in lieu of the amounts described in Section 2, impose an issuer's fee of $\frac{1}{4}$ of 1% of the principal amount of bonds, payable as of the TEFRA hearing or, if so specified by the City Council, at closing, as a one-time fee.

4. It is generally contemplated that there will not be exceptions to the fees described above. Any modifications to the fee charged in connection with a particular issue shall require the affirmative votes of not less than four (4) members of the City Council. If fewer than five (5) member of the City Council are eligible to vote regarding the consideration of exceptions to fees, no exception shall be approved unless it is first approved unanimously by all members of the City Council who are eligible to vote.

5. The applicant shall provide (and shall cause such consultants and representatives to provide) such information, certifications, and writings as may be requested from time-to-time by the City, its bond counsel, staff, appraiser and consultants, including, but not limited to, a federal securities law opinion of counsel to the applicant addressed to the City and the underwriter for the proposed bonds regarding the accuracy and completeness of the information contained in the offering document for the bonds relating to the applicant and its proposed development as well as a certificate of the applicant complying with SEC Rule 15c2-12. In addition no official statement shall be executed on behalf of the City or Agency without fully complying with footnote 33 of SEC Release No. SEC Release 34-26985 (June 28, 1989).

6. All City and consultant costs incurred in the evaluation and issuance of conduit financings will be the responsibility of the requesting entity. The City shall not incur any non-reimbursable expenses for in connection with such financings.

7. The City shall select all consultants necessary for the issuance of bonds, including the underwriter(s), bond counsel and financial advisors. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team. Bond counsel or financial advisor to the City shall draft any disclosure documents with respect to any such conduit financing unless bond counsel and financial advisor otherwise recommends. In either case, the underwriter shall be required to retain its own legal counsel who shall render to the underwriter and the City or Agency the federal securities law opinion described in paragraph 5 above regarding the accuracy and completeness of the information contained in the offering document for the proposed bonds (other than information with respect to the City or Agency).

8. The City may from time-to-time enact and amend procedures to implement the goals and policies herein set forth. In such event, the applicant shall comply with the requirements under such procedures.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA ADOPTING POLICIES IN CONNECTION WITH CONDUIT ISSUES OF BONDS AND RELATED HEARINGS

WHEREAS, From time to time, the City is called upon to conduct hearings under the Tax Equity and Fiscal Responsibility Act (IRC § 147(f), as amended) (commonly referred to as "TEFRA") as a precursor to the issuance of bonds by a governmental entity on behalf of private parties (as determined under the Internal Revenue Code). Such hearings are generally triggered because the facilities to be financed are located (or to be located) within the corporate limits of the City; and

WHEREAS, historically, the City has acted as issuer in connection with conduit financings for all facilities located within the City limits for which TEFRA hearings are required. This practice has generally achieved three positive results for the City. First, by being the issuer, the City (and, if applicable, the Agency) is in a position to insist upon thorough briefings regarding the facilities to be financed and developments that occur relative to such projects. Second, the City, which has significant portions of non-residential property devoted to uses which result in exemptions from property taxes, has been able to offset costs (such as fire and police protection) through the collection of issuer's fees. Third, the City, as well as the Agency, is able to have the issuance of bonds conducted by professionals which it directly selects and who understand the policies, procedures and interest of the City and Agency; and

WHEREAS, the City typically has substantial interest relative to the subject matter of facilities which are financed by conduit issuers within its corporate limits facilities. In the event bonds were to be issued by an issuer other than the City (or the Agency, or another entity under control of the City or Agency), the ability of the City (or Agency, as applicable) to assure that the public interest is best furthered in connection with the manner in which the issuance is conducted is greatly lessened. While other arrangements may be available, and may, on occasion be more convenient for particular private parties, the ability of the City (or Agency) to best advance the public interest is diminished. In addition, practical experience suggests that where the City (or Agency) is not the issuer, there is no City or Agency control over the issuance process and requests for TEFRA hearings or necessary agreements, consents or waivers are presented in time frames that may not be conducive to appropriate levels of review. Relative to housing matters, for example, the Agency is in a far better position to insist upon the imposition of long-term affordability covenants that pass muster under provisions of the California Community Redevelopment Law to maintain the priority of covenants and to negotiate other protective measures than would be the case if the City or Agency does not act as issuer. In addition, City or Agency staff is invariably privy to greater information in connection with bonds for which the City or Agency acts as issuer; and

WHEREAS, in connection with conduit bonds issued by the City (or Agency), the City has traditionally charged an issuer's fee; this has typically been ¼ of 1% of the principal amount of the bonds, as a one-time fee, payable at time of issuance of the bonds. The City's Financial Advisor indicates that practices of various conduit issuers vary considerably. In general, however, the size of issuer's fees depends partially upon the subject matter underlying the issue, with industrial

Resolution No.
Page 2

development bonds and housing bonds tending toward higher fees and other facilities tending to have lower issuers fees; and

WHEREAS, the City's Financial Advisor has further recommended that the fees charged by City relative to TEFRA and/or other matters related to the issuance of bonds be subject to periodic review; such issuer's fees are exclusive of bond counsel and financial advisor fees.; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMA LINDA DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The Policies, in the form submitted herewith, are hereby adopted as policies of the City in connection with the issuance and authorization of bonds in connection with conduit financings and in connection with the conduct of hearings under TEFRA.

Section 2. The City Manager is hereby authorized and directed to take any actions and do any things which he may deem necessary or desirable in order to implement this Resolution.

Section 3. This Resolution shall take effect immediately upon its adoption.

APPROVED and ADOPTED by the City Council of the City of Loma Linda on March 14 2006 by the following vote:

Ayes:

Noes:

Absent:

Floyd Petersen, Mayor

ATTEST:

Pamela Byrnes-O'Camb, City Clerk